IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12912 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHASHIKANT K PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for the Petitioner.

GOVERNMENT PLEADER for Respondent No. 1-2

MR DD VYAS for Respondent No. 3-4

MS RV ACHARYA for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 01/10/2003

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for a direction to the respondent no.3

District Development Officer, Valsad to fill up vacant posts of Multipurpose Health Supervisor on the basis of the Government Notification at Annexure "D" to the petitioner and in the alternative, on the basis of the seniority list and for a further direction to the respondent no. 1 to immediately finalise recruitment rules for the post of Multipurpose Health Supervisor in the Panchayat service and to give a direction to the respondent no. 3 for giving the benefit of higher pays scale to the petitioner on the formula of 9-18-27 years higher pays scale after completion of 9-18-28 years. It is asserted that the petitioner was appointed as Multipurpose Health Worker in Valsad district vide order date 27th August, 1980. Since then he is continuously serving the department on the said post. He was regularised on the said post by an order dated 5th October, 1991. Once seniority list was published on 14.12.1984 wherein the petitioner was on the top. Though few other employees have been appointed on the same post and the petitioner is the senior-most employee and eligible to be promoted to the higher post of the Multi-purpose Health Supervisor. There are nine posts of Multi-purpose Health Supervisor in Valsad District Panchayat, but the vacancies of these posts have not been filled up as there exist no recruitment rules. It is stated that some recruitment rules have been framed, but they have not been finalised by the State Government. The State Government has framed recruitment rules for the said post of Multi-purpose Health Supervisor for the state service and rules to that effect were notified on 21st June, 1990. According to those rules, the petitioner is fully eligible having full qualifications and proved merits and efficiency and even then the petitioner has not been promoted. The petitioner is fulfilling all criteria prescribed by the notification dated 21st June, 1990. Neither the petitioner has been promoted to the higher post nor the benefit of stagnation rule applicable to the State Government employees has been given and the benefit of that formula has not been given to the petitioner.

2. The petitioner has sent several letters to the authorities for filling up nine vacancies, but no recruitment rules have been framed for that purpose as per the circular dated 14.8.1991. Rules and circulars of the State Government are made applicable to the Panchayat services. As such, the petitioner being fully eligible and qualified is entitled for the promotion to the higher post of Multi-purpose Health Supervisor. As the petitioner is not getting promotion of supervisor only because the State Government has not framed Rules for the

Panchayat services and the benefit of stagnation higher pay scale has also not been given to the petitioner.

3. The respondent no. 3 District Development Officer, Valsad District Panchayat has filed affidavit-in-reply stating therein that for the purpose of Multi-purpose Health Supervisor under Panchayat services, recruitment rules have not been framed and finalised by the State Government. Moreover, this Court granted stay against filling up vacancies of suitable candidates on this post in question in Special Civil Application no. 3569 of 1994 filed by Gujarat State Malaria Servants Staff Association. Hence, the resolution dated 11th June, 1984 has been stayed. The respondent Panchayat has already requested the State Government, i.e. Panchayat Department of the Government to frame recruitment rules vide order dated 17th February, 1992. Therefore, the grievance of the petitioner cannot be considered in absence of of the recruitment rules of the post in Panchayat service. It is also mentioned that even otherwise also, the petitioner's services are to be considered as regularised in view of the resolution dated 2.5.1991.

3. Heard the learned counsel for the petitioner and perused the relevant papers on record. This petition has been pressed only for a direction to the authority to frame recruitment rules for the post of Multi-purpose Health Supervisor in Panchayat services or Panchayat department should adopt the rules framed for the said post of Multipurpose Health Supervisor in the State Services. That has been notified on 21st June, 1990 and to consider immediately the case of the petitioner for the promotion within a stipulated period. In case there is no recruitment rule, then the general rule of seniority cum merit should be applied for the promotion of the petitioner to the higher post of Supervisor.

4. Considering the facts and circumstances of the case, this petition is being disposed of finally with a direction to the respondent authorities to frame and finalise recruitment rules for the post of Multi-purpose Health Supervisor in the Panchayat services within a period of four months from the date of receipt of the writ from this court and/or the respondent authorities are directed to adopt the recruitment rules for the said post in the State services notified on 21st June,1990 within the said period and to decide the representation of the petitioner within a period of one month thereafter. The petitioner is at liberty to make a

detailed representation to the respondents making out his case for entitlement for the post of Multi-purpose Health Supervisor for the Panchayat services within a period of one month from the date of receipt of certified copy of this judgment If the State Authority is not able to frame recruitment rules for Panchayat services or cannot adopt the recruitment rules for the said post of Multi-purpose Health Supervisor in the State Services as per notification dated 21st June, 1990, the representation made by the petitioner will be considered as there is no rule for that purpose on the basis of the general rule of seniority cum merit for the promotion to the petitioner to the higher post within the aforesaid period. With these observations, Rule is discharged with no order as to costs.

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